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In re Application of	:	
Ken Gardner	:	
Application No. 10/633,075	:	DECISION ON PETITION
Filed: August 1, 2003	:	PURSUANT TO
Attorney Docket No. PGARDK-S	:	37 C.F.R. § 1.181(A)
Title: SUPPORT FOR SURVEY ROD	:	
	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment, filed on May 23, 2008.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed March 14, 2007, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on June 15, 2007. A notice of abandonment was mailed on September 25, 2007.

With this petition, Petitioner has asserted that a response to the non-final Office action was submitted to the Office on September 14, 2007, along with a three-month extension of time. Petitioner has submitted both a copy of this response and a postcard receipt that establishes that both "check no. 2192, dated 09/14/2007, in the amount of \$510.00 to pay for a 3-month extension of time" and an "[a]medment, dated 09/14/2007 (18 pages)" were received in the Office on September 14, 2007.

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Moreover, the Office's records show that \$510, the fee that is associated with the filing of a petition for a three-month extension of time, was received in the Office on September 14, 2007.

Furthermore, an 18-page amendment and a petition for an extension of time have been located in the electronic file, dated September 14, 2007; therefore, it is clear that this response to the non-final Office action was timely received on September 14, 2007.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that a response was timely submitted.

Accordingly, the petition under 37 C.F.R. § 1.181(a) is GRANTED. The holding of abandonment is WITHDRAWN.

It is noted in passing that Petitioner has filed arguments pertaining to the timeliness of this petition. Section 711.03(c)(I)(C)(3) of the MPEP sets forth, *in pertinent part*:

In utility and plant applications filed on or after May 29, 2000, a terminal disclaimer should not be required as a condition of granting an untimely petition to withdraw the holding of abandonment. This is because any patent term adjustment is automatically reduced under the provisions of 37 CFR 1.704(c)(4) in applications subject to the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) if a petition to withdraw a holding of abandonment is not filed within two months from the mailing date of the notice of abandonment, and if applicant does not receive the notice of abandonment, any patent term adjustment is reduced under the provisions of 37 CFR 1.704(a) by a period equal to the period of time during which the applicant "failed to engage in reasonable efforts to conclude prosecution" (processing or examination) of the application.

This matter is not presently ripe for review, and as such, **the arguments contained in this petition pertaining to the alleged non-receipt of the notice of abandonment have not been considered by the undersigned.** Should Petitioner receive a "Determination of Patent Term Adjustment under 35 U.S.C. 154(b)" concurrently with any Notice of Allowance and Issue Fee Due, a petition pursuant to 37 C.F.R. 1.705(b) should be filed before the issue fee is paid.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of

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this decision, so that the response to the non-final Office action that was received on September 14, 2007 can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the withdrawal of the holding of abandonment has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.¹ All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

¹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).